THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 16041 of 2004

Oral order:

Questioning the order dated 15.07.2004, passed by the 1st respondent, namely the Assistant Commissioner of Labour, Vizianagaram, in I.A. No. 1 of 2004 in M.W. No. 3 of 2003, including the *ex parte* order award dated 17.05.2003 passed in M.W. No. 3 of 2003, the petitioner filed this writ petition.

To set aside the *ex parte* order dated 17.05.2003 passed by the 1st respondent, allowing the claim of the unofficial respondents-workmen, the petitioner filed an application in I.A. No. 1 of 2004 seeking to condone the delay in filing the set aside the default order. Assailing the said order, the petitioner filed the present writ petition.

The learned counsel for the petitioner mainly contended that since the unofficial respondents had claimed non-payment of wages, they have to make their claim before the authority constituted under the Payment of Wages Act, 1936, and the 1st respondent, who is the authority under the Minimum Wages Act, 1948, has no jurisdiction to entertain the claim of the unofficial respondents, and he had committed an error in entertaining the same. Therefore the impugned *ex parte* order, as well as the order refusing to condone the delay in filing application to set aside the *ex parte* order has to be set aside, as the same suffer from lack of jurisdiction.

On the other hand, the learned counsel for the unofficial respondents agreed that the claim of the workmen is for non-payment of wages and that they have to file their claim petition under Section 15(2) under the Payment of Wages Act, 1936 or under Section 33(c) of the Industrial Disputes Act, 1947.

Heard the learned counsel for the petitioner and the learned counsel for the unofficial respondents.

In view of the agreed stand taken by the counsel for the unofficial respondents that the claim of the unofficial respondents before the 1st respondent, namely the authority under the Minimum Wages Act, 1948 is not maintainable, and that the authority constituted under the Payment of Wages Act, 1936, is alone entitled to adjudicate

the claim, the impugned *ex parte* order and the subsequent order passed by the 1st respondent refusing to condone the delay in filing application to set aside the *ex parte* order, cannot be sustained, and they are accordingly set aside for they lack jurisdiction. The unofficial respondents are at liberty to file appropriate claim petitions before the authority under the Payment of Wages Act, 1936, and if any such claim petitions are filed, the authority under the Payment of Wages Act, 1936, shall decide the issue of payment of wages to the unofficial respondents expeditiously without any delay. Since the impugned orders are set aside, the amount deposited by the petitioner in terms of the interim orders of this Court, shall be returned to him.

Accordingly, the writ petition is allowed with the above directions. No costs.

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N.V. RAMANA, J.

Dated: 11.12.2006

K S R / I S L.